R. (Heron) v. Trinity College Dublin
(1845) 9 Ir. Law Rep. 41

# IRISH LAW REPORTS,

OF

# CASES

ARGUED AND DETERMINED IN THE COURTS OF

## QUEEN'S BENCH, COMMON PLEAS,

AND

## EXCHEQUER OF PLEAS,

DURING THE YEARS 1846 AND 1847.


**Queen's Bench:**
By JOHN S. ARMSTRONG, Esq. and WILLIAM H. FALOON, Esq.
**Common Pleas:**
By MICHAEL R. WESTROPP, Esq.
**Exchequer of Pleas:**
By ROSS S. MOORE, Esq. and LEWIS MORGAN, Esq.
**Exchequer Chamber:**
By DOMINICK M'CAUSLAND, Esq.
BARRISTERS-AT-LAW.


## VOL. IX.


DUBLIN:
HODGES AND SMITH, 104 GRAFTON STREET.
1847.

H. T. 1846.
*Exch. of Pleas.*

BRENNAN
*v.*
MULLINS.

*Fitzgerald* refusing to consent to a *stet processus*, and to pay the costs of the motion, the motion was refused with costs.

*Per Curiam.**

ORDERED—That the cause shown against said conditional order be allowed with costs, to be paid by the defendant to the lessors of the plaintiff, and said conditional order be discharged without further motion.

* RICHARDS, B., *absente.*

## HOWZELLE *v.* WATSON.

*Jan.* 19.

On motion for liberty to issue a *sci. fa.* to revive a judgment, the plaintiff's affidavit had been sworn before the President of the Civil Tribunal, and signature of the plaintiff attested by the Mayor and Sous-Prefect of Verdun, in France; and the French Consul, resident here, by affidavit stated that there was no resident British Consul or Notary Public at Verdun, that the Civil Tribunal was a recognised Court of Justice; he also verified the seals attached to the affidavit; the usual order was granted.

DUNDAS, moved for liberty to issue a *scire facias* to revive a judgment. The affidavit, which was in the common form, had been sworn before the President of the Civil Tribunal, and the signature of plaintiff was attested by the Mayor and Sous-Prefect of Verdun, in France, with their respective seals attached thereto.

The French Consul, resident in Dublin, had by affidavit stated that there was no resident British Consul or Notary Public at Verdun, that the Civil Tribunal was a recognised Court of Justice; and also verified the seals attached to the affidavit, as well as the handwriting of plaintiff.

LEFROY, B.*—Take the order.

* *Solus.*



T. T. 1845.
*Queen's Bench.*

## THE QUEEN at the Prosecution of D. C. HERON,
*v.*
## THE VISITORS OF TRINITY COLLEGE, DUBLIN.

*(Queen's Bench.)*

*May* 23.

This Court will grant a mandamus to compel the Visitors of Trinity College, Dublin, to proceed to hear and determine the appeal of a party who complains of an undue election of a Scholar in said College.

The power vested in the Visitors by common law to hear such appeal is unrestrained by the College charters or statutes.

MANDAMUS.—This case came before the Court on a *concilium** to determine the sufficiency of a return to a mandamus.—[The mandamus and return are so fully stated in the judgment, it is unnecessary here to insert them.]

*O'Hagan*, with whom were *Holmes* and *Hancock*, for the prosecution.

There are several formal objections to this return. It is inconsistent, as relying on two distinct grounds; first, on total want of jurisdiction; and secondly, in stating that in the exercise of a discretion vested in the Visitors, they had rejected the appeal; this repugnancy alone would entitle the prosecutor to a peremptory mandamus: *Rex* v. *The Mayor of Cambridge* (*a*); *Wright* v. *Fawcett* (*b*); *Regina* v. *The Mayor of Norwich* (*c*).—[PERRIN, J. Must it not be read, that feeling in the exercise of their discretion that they had not jurisdiction, they therefore rejected the appeal?]

Supposing the causes not inconsistent, the return is uncertain: *Bentley's case* (*d*); *Rex* v. *Hutchinson* (*e*); *Rex* v. *Mayor of Lyme Regis* (*f*); it says nothing as to the particular matter, and contains no averment that the Visitors have not authority to interfere with the board. Whether or not they had jurisdiction should have been positively averred; it is not sufficient to say they are advised and submit that they had no jurisdiction, and whether that be matter of law or of fact it should have been specially averred: *Anonymous* (*g*); *Rex* v. *Mayor of Coventry* (*h*); *The Queen* v. *Mayor of Hereford* (*i*).

(*a*) 2 Term Rep. 456.
(*b*) 4 Bur. 2041.
(*c*) 2 Ld. Raym. 1244.
(*d*) Fort. 202.
(*e*) 8 Mod. 99.
(*f*) 1 Doug. 153.
(*g*) Vent. 267.
(*h*) 2 Salk. 430.
(*i*) 6 Mod. 309.

* It has since been enacted by the 9 & 10 *Vic.*, c. 113, s. 6, that when a prosecutor intends to object to the validity of a return to a mandamus, he must do so by demurrer.

T. T. 1845.
*Queen's Bench.*
THE QUEEN
*v.*
TRINITY COLLEGE.

As to the jurisdiction. If the Provost and Fellows have power to admit or reject Scholars without any appeal to the Visitors, then there is no appeal at all. The charter of Charles the First in the 4th section gives the power of election; the 5th section is in reference to the qualification of the Scholars; and the 21st section has regard to the oaths to be taken. So far as those sections are concerned no arbitrary discretion is given, but according to certain specified rules and conditions. Now, what is the visitatorial power? In all colleges there are two jurisdictions, one as regards internal government, the other as regards Visitors without reference to government: 1 *Burn's Ecc. Law*, by *Phillimore*, 438; 7 *Com. Dig.* tit. *Visitor*; *Philips* v. *Bury* (*a*). Visitors may be general or special, and if they be general they have a specific power as to the matter of the election: *King* v. *Bishop of Ely* (*b*); *King* v. *Bishop of Lincoln* (*c*); *Widdrington's case* (*d*); *Fellows of Cambridge* v. *Todington* (*e*). These cases establish that the power of a general Visitor is a power of redressing grievances and regulating elections in a college: *Queen's College, Cambridge* (*f*); 1 *Burn's Ecc. Law* 457. If the Visitors be general there is a power of appeal, and if so, we are entitled to a peremptory mandamus: *Green* v. *Rutherforth* (*g*); *The Attorney-General* v. *The Master and Fellows of Clare Hall* (*h*); *Rex* v. *Bishop of Worcester* (*i*); *Com. Dig. Visitor A.* 15. In the writ of mandamus the Visitors of Trinity College are called Visitors generally, and this is not controverted on the return, and the powers given by the statutes are very general: *Mac Donnell's Ed. of College Statutes*, pp. 26, 53, 102; *Ex parte Ravensworth Hospital* (*k*). As to the question of discretion, if the jurisdiction be well established, then the argument as to discretion is at an end, for if the Visitors have jurisdiction the Court will compel them to hear the appeal. They have set out on the face of the return a charter of William the Fourth, showing that they intend to rely on this discretion, but why should they have an absolute discretion? That charter does not interfere with the visitatorial power, it merely leaves it optional with the Visitors as to the times they are to hold visitations: *Burn's Ecc. Law*, p. 442; a peremptory mandamus should therefore go, because this return is

(*a*) 2 Term Rep. 352; S. C. 4 Mod. 106.
(*b*) 5 Term Rep. 475.
(*c*) 2 Term Rep. 338, *in notis*.
(*d*) Sir T. Ray. 31.
(*e*) 1 Burr. 158.
(*f*) 5 Russ. 65.
(*g*) 1 Ves. 465.
(*h*) 3 Atk. 663.
(*i*) 4 M. & Sel. 420.
(*k*) 15 Ves. 314.



T. T. 1845.
*Queen's Bench.*
THE QUEEN
*v.*
TRINITY COLLEGE.

uncertain and argumentative, and because it avers a want of jurisdiction which the Visitors clearly have.

*S. B. Millar*, with whom was *Napier*, in support of the return.

There is no inconsistency in this return, but whatever may be the question upon its sufficiency, the writ of mandamus is in itself insufficient, and where a writ of mandamus is set out on a *concilium*, the proper course is to object to the writ: *Queen* v. *Powell* (*a*). The Chapters *De Scholaribus et Discipulis*, and *De Electione* in the College statutes, are those which show the defective nature of this writ.

The charter of Charles the First, constituting the Provost and Senior Fellows the body to elect Scholars, expressly directs that they should be elected according to the statutes *(juxta statuta nostra)*, and that those so elected should have similar privileges with former Scholars, according to the tenor of such statutes; and the statutes are declared to which the reference in the charter was to apply. The writ of mandamus, after stating the existence of such statutes, sets out that on such election "regard should be had to "poverty, talent, learning and virtue, and the more any of the can- "didates exceeded in these things, the more, as was just, he should "be preferred." It sets out no further portion of that chapter *De Scholaribus*, or of the statute relating to the qualifications in the candidates for scholarship (c. 5, p. 32, College stat.,) nor is there any averment in the writ that Heron had any of the qualifications so set forth in that chapter, or that any of the other candidates who had been elected had not any such qualifications. It alleges two reasons for Heron's rejection, viz., that he would not receive the sacrament, and that he was a Roman Catholic, and it adds, that "they rejected him for no other cause," not that they so stated. This is insufficient: *Rex* v. *Margate Pier Company* (*b*); *Regina* v. *Hopkins* (*c*). These two allegations of the reasons assigned could only be entertained by this Court, on the assumption that the Provost and Senior Fellows had violated their duty as prescribed by the statute, and yet they are no parties to this prosecution. The 25th chapter of College statutes, p. 84, prescribes the mode and time of election; the votes are simply to be written down, and no statement of reasons is to be offered, and yet the Court is called on to grant a mandamus on grounds which could only be known by a disclosure of the Provost and Fellows, contrary to the statute.

(*a*) 1 Ad. & Ell., N. S. 360.
(*b*) 3 B. & Ald. 220.
(*c*) 1 A. & E., N. S. 161.

T. T. 1845. *Queen's Bench.* THE QUEEN *v.* TRINITY COLLEGE.

The authority of the Provost and Fellows in the election of Scholars is quite absolute; for where qualifications of so varied a nature were required, as are specified in the charter of Charles, the absolute authority or discretion in the selection of Scholars must ultimately be vested in some body or person; and in none could it be more fitly placed than in those who have an opportunity, from local situation, of acquiring the best information on these subjects. The only controlling power is their own consciences; and as they are by the charter to sit in secret and give their votes "*simul et semel*" without assigning any reason, there are no materials on which a visitatorial inquiry could be held. In the 4th chapter or statute, p. 35, tit. De auctoritate præpositi et septem sociorum seniorum, are these words:— "Volumus igitur ut præpositus et horum seniorum pars major "(nempe quatuor) collegii regimen, electiones omnes sociorum offici- "ariorum et discipulorum et ministrorum collegii graduumque "collationes definiant et concludant." These words, "*definiant et concludant*," taken in connection with the chapter, "*de formâ electionis*," show clearly that the Provost and Senior Fellows were to have the absolute selection of Scholars. In chapter 4, in describing the authority of the Provost and Senior Fellows, the words "*ut definiant electiones discipulorum*" are used with the word "*concludant;*" and in the statute of Charles (p. 27), prescribing the authority of the Visitors, whose authority in matters within their jurisdiction cannot be questioned, the same word "*definiant*" is used. So that the authority of the Visitors is derived from the same charter and statutes whence the Provost and Senior Fellows have derived theirs; and these are the charters and statutes now in force: ***Senior Fellows of St. John's College*** v. ***Toddington***; ***The King*** v. ***St. John's College, Cambridge*** (*a*).

The Visitor is made by the founder: ***Philips*** v. ***Bury*** (*b*); and his powers are limited within the rules of the foundation; and the return here accordingly states the portion of the statutes giving the visitatorial power "ut omnes lites actiones et controversias "quas præpositus et major pars seniorum sociorum pro tempore "existentium non possint componere dirimant et definiant." The present matter is not a dispute between members of the College, but a complaint by a dissatisfied student against the governing body, who have adjudicated upon it, and in which the Visitors cannot interfere. The Primate and the Archbishop of Dublin are not general Visitors; they have only a limited visitatorial authority in the particular cases specified in the charter of Charles and

(*a*) 4 Mod. 241. (*b*) Skinner, 448.



T. T. 1845. *Queen's Bench.* THE QUEEN *v.* TRINITY COLLEGE.

statutes, chapters 11 and 27. The discretion vested in them is only as to the times of holding visitations. To hold that they are general Visitors, and had in right of that general authority any jurisdiction to entertain this appeal, would enable them to displace any of the sixteen candidates elected, and admit Heron; and if they have not this power of removal and substitution, the Court will not grant a peremptory mandamus to hear an appeal which could be attended with no effect. The application is one to the discretion of the Court: ***The King*** v. ***Paddington Vestry*** (*a*); and if the granting the mandamus will lead to no result, the Court will refuse it: ***The King*** v. ***Justices of Pembrokeshire*** (*b*).

***Napier***, on same side.

The objections to the return are divided into two classes; first, formal ones; and second, as to the jurisdiction of the Visitors. As to the first class, there is no inconsistency in this return, for it only sets forth that the Visitors have no jurisdiction in the matter brought before them by appeal; and that according to the discretion vested in them as Visitors as to holding visitations, they refuse to entertain the appeal. The principle of inconsistency in a return is this; that if two matters be returned, which neutralise each other, the Court will then interfere, and say there is no ground for refusing to put the jurisdiction in motion; but if on the return there appears to be no jurisdiction, the Court will never grant a peremptory mandamus: ***The King*** v. ***Mayor of Bristol*** (*c*); ***The King*** v. ***Corporation of Dublin*** (*d*).

Then, as to the jurisdiction of the Visitors: the election of Scholars is to be had with regard to matters connected with the learning and attainments of the candidates, and is to be in secret. No one can then tell what influenced the minds of the electors; though the writ assign two reasons, yet it does not state all the reasons: ***The Queen*** v. ***Governors of the Darlington School*** (*e*); ***Rex*** v. ***Mayor of London*** (*f*). It merely says an insufficient reason for Heron's rejection has been assigned, that he was a Roman Catholic; but could the Visitors on this ground be called on to reinstate Heron? The Electors are bound by the sanctity of an oath, and are the Visitors to be called upon to exercise an appellate jurisdiction, because the reasons have not been given under the sanction of an oath? It is analogous to the case of a jury; the Court will not

(*a*) 9 B. & Cress. 460. (*b*) 2 B. & Ad. 391.
(*c*) 1 Dow. & Ry. 389. (*d*) Batty, 636.
(*e*) 9 Jurist, 24. (*f*) 3 B. & Ad. 255.

T. T. 1845. *Queen's Bench.* THE QUEEN *v.* TRINITY COLLEGE.

receive the statement or affidavit of a juror that the verdict was decided by a toss: *Burgess* v. *Langley* (*a*). It is then said no other reason is given; but how could that be traversed? How could the Visitors say there was any other reason? From the nature of the thing, no question can be raised as to the want of reasons; and it must be left in the hands of those who ought to know all the reasons. The discretion must be somewhere: *The King* v. *Archbishop of Canterbury* (*b*).

*Holmes*, in reply.

The Visitors have, by this return, denied their own jurisdiction; it is usually one of the litigant parties who does so; but here it is the Court itself. Every founder of an eleemosynary corporation has an uncontrolled right to prescribe laws to the body he creates, so far as that he prescribes nothing inconsistent with the law or religion of the land. He has the right to visit them, and he may appoint Visitors unless there be negative words in the grant; and they have the same rights as the founders. If the power of Visitors be given in general terms, it is universal. The statute of William the Fourth refers merely to ordinary official visitations, but does not say a word as to extraordinary visitations. The Visitors have an inherent authority to hear appeals that come within their jurisdiction; that is decided by the case cited of *St. John's College* v. *Toddington*. A Visitor's authority shall not be restrained except by negative words: *The King* v. *Bishop of Worcester* (*c*). Danpier, J., says:—"A general visitatorial power requires particular words to abridge it." Whether, then, on the statutes of this College the visitatorial power is restrained, depends on the construction of particular Latin words. The Scholar's oath any Roman Catholic may take; and to exclude Heron, because he is a Roman Catholic, is *extra viam*. It is argued that the words "*definiant et concludant*" are conclusive as to the election; but because this Court, for example, decides a case, is there not still an appeal? The words, too, "*collegii regimen*" mean something more than the trifling regulations of the college; primarily "*regimen*" means the rudder of a ship, without which she cannot be managed; and in Tacitus the words *regimen imperii* are used. They mean a general control and management of a thing. In that case cited from the *Jurist*, the power of the Visitors was limited; here the Visitors had the power of referring to the records of the College; and has it been shown that the visitatorial power is limited,

(*a*) 6 Scott, N. R. 520. (*b*) 15 East, 146.
(*c*) 4 Man. & Sel. 415.



T. T. 1845. *Queen's Bench.* THE QUEEN *v.* TRINITY COLLEGE.

as they contend? We have found two cases applicable as far as the power of the Visitors is concerned, in reference to scholarships, not certainly as regards election thereto. One is the case of Mr. Anster; when in Trinity College he did not go in for the scholarship with the class he was first in, but with one he joined afterwards; and in 1818, on an election for the Members for the University, Anster tendered his vote for Mr. Plunket, one of the candidates; the vote was objected to, but ultimately received by the assessor, and Mr. Croker, the other candidate, insisted on this vote being brought before the Visitors on appeal, and it was decided Anster had no right to drop his class. The appeal was from the Board to Lord Downes, as Vice-Chancellor, who heard the appeal as to Anster's right to hold the scholarship; and it was decided against him. That was a case where the Provost and Senior Fellows "*possunt componere litem;*" they had decided; but the appeal being entertained, shows that the power of the Visitors is not limited.

The other case is recorded in *Lachrymæ Academicæ*, pp. 192, 205, 220, by Dr. Duigenan, the case of the Rev. Edward Berwick. The Provost and Senior Fellows had sentenced him to be deprived of his scholarship for contumacy; from which sentence he appealed to the Visitors, who investigated the matter publicly in the College Hall, and examined the Provost and Senior Fellows upon their oaths relative to the sentence, and the grounds of it. The Visitors reversed the sentence, and ordered Mr. Berwick to be restored to the full emoluments of his scholarship.

*Cur. ad. vult.*

*June* 10. PENNEFATHER, C. J., delivered the judgment of the Court.

In this case a mandamus has issued at the suit of D. C. Heron against the Visitors of Trinity College, and the prayer of the mandamus is that the Visitors may be ordered to proceed to hear and to determine the appeal of Heron, and the mandatory part of the writ commands the Visitors to hear and determine the appeal.

The writ sets out the circumstances under which the prosecutor applied for the protection and interference of the Court in his favour; it is directed to the Primate and to the Archbishop of Dublin as Visitors. It states, by way of recital, that Queen Elizabeth, by royal charter, dated 3rd of March, in the thirty-fourth year of her reign, founded and appointed that there should be a College for the education of youth and students in arts and sciences near Dublin. It recites a patent of confirmation of King Charles the First, dated 25th May, in the fifteenth year of his reign, whereby he appointed the Chancellor, or, in his absence, the Vice-Chancellor,

T. T. 1845. *Queen's Bench.*

THE QUEEN *v.* TRINITY COLLEGE.

who is now the Lord Primate, and the Archbishop of Dublin, Visitors. It states, that of the same date King Charles the First did make certain statutes for the better government of the College, whereby he appointed certain days and times for the examination of candidates for scholarships in the College, and otherwise regulated the examination and election thereof; and whereby he enacted that the Scholars of the College should be seventy in number; and that, so often as the place of any Scholar should become vacant, some fit and proper person should be elected to such vacancy, by the Provost and Senior Fellows; and that in such election, regard should be had to poverty, talent, learning, and virtue, and the more any of the candidates excelled in these, the more, as was just, he should be preferred.

The writ then states, that on the 1st of June 1843, sixteen places being vacant in the body of Scholars, and several persons, exceeding sixteen in number, offering themselves as candidates, the Provost and Senior Fellows, for the time being, proceeded to an examination of the candidates, in order to ascertain their qualifications; that Mr. Heron, a Sizar of the College, attended the examination as a candidate, and was examined, and that a list was subsequently made out, by order of the Provost and Senior Fellows, ranging in order of merit the candidates who had attended and been examined, on which list Heron's name appeared the fifth in order of merit.

The writ then states, that on the 12th of June 1843, the day appointed by the statutes, the Provost and Senior Fellows proceeded to make the election, and to fill up the sixteen vacant places of Scholars; that they elected sixteen of the candidates, in the order of merit in which they stood on the list, with the exception of Heron, and that they rejected Heron, and declined to elect him to one of the sixteen vacant places of Scholars, on the ground by them assigned that he had not received the Sacrament of the Lord's Supper according to the usage of the United Church of England and Ireland, in the chapel of the College, on the Sunday immediately preceding the day appointed for the election of Scholars, and on the further ground by them also assigned, that he was a member of the denomination of Christians commonly called Roman Catholics, and for no other reason whatever.

The writ then states that Heron had been advised, that inasmuch as eleven of the sixteen persons so elected to be Scholars, had been, on the examination held pursuant to the statutes, declared by the Provost and Senior Fellows inferior in merit to him, he was entitled, according to the provisions of the statutes, to one of the sixteen places of Scholars vacant before the election.

The writ then states, that the Primate and Archbishop of Dublin



T. T. 1845. *Queen's Bench.*

THE QUEEN *v.* TRINITY COLLEGE.

were and are the Visitors of the College; and that on the 1st of November 1843, Heron made an application to them in the nature of an appeal against the decision of the Provost and Senior Fellows, in which he prayed that they would hear his appeal, would institute an inquiry into his case, and would adopt such means as might seem good to them as Visitors, for securing to him the place and advantages of scholarship in the College, to which he claimed to be rightfully entitled, or would otherwise determine the matter of his appeal; and that, notwithstanding his application, the Visitors did absolutely refuse to hear and determine his appeal. The writ of mandamus then concludes with the command which I first noticed.

The Visitors have made a return to the following effect:—They state the patent of Queen Elizabeth, as mentioned in the writ; and add, that the Corporation of the College was made to consist of the Provost, Fellows, and Scholars. They state the patent of King Charles the First, mentioned in the writ, and add the following passage:—

"Similiter etiam si contigerit Sociorum Juniorum et Scholarium "aliquem ullo modo deesse et amoveri, morte, decessu, resignatione, "deprivatione, vel alio quovis modo quod tunc et deinceps bene "liceat et licebit Præposito et Sociis Senioribus vel majori parti "eorundem pro tempore existentium una cum Præposito aliam "idoneam personam aut alias idoneas personas in locum vel locos "prædicti Socii Junioris aut Scholaris 'Sociorum Juniorum aut "Scholarium die Lunæ post Dominicam Sanctæ Trinitatis ad tunc "proxime sequentem eligere nominare et constituere juxta Statuta "nostra prædicta in hoc casu provisa et sic de tempore in tempus "toties quoties mors, decessus, resignatio, vel deprivatio contigeret "quodque quilibet eorum in hujusmodi locum vel locos, Præpositi, "Sociorum Seniorum, Sociorum Juniorum, vel Scholarium respec- "tive sic (ut præfertur) electus habeat et gaudeat ac habere et "gaudere valeat et possit adeo plenam et liberam potestatem auctori- "tatemque in omnibus, et per omnia, et ad omnia, et singula agenda "perimplenda et exigenda prout ipse Præpositus, vel aliquis alius "Sociorum Seniorum, Sociorum Juniorum, vel Scholarium dicti "Collegii pro tempore existentium quovis modo habere seu gaudere "debeant aut possint juxta tenorem prædictorum statutorum nostro- "rum in hoc casu designatorum (*a*)."

It is quite plain that the mode of election thus pointed out in this passage of the charter, conferring this power, did not give the Provost and Senior Fellows any thing like a capricious power of

(*a*) College Statutes, &c., Mac Donnell's edition, p. 20.

T. T. 1845. *Queen's Bench.*

THE QUEEN *v.* TRINITY COLLEGE.

election; but in the election due regard was to be had to the statutes of the College.

The Visitors then state that King Charles the First gave certain statutes for the better government of the College, by the first head of which it is ordained as follows:—

"Corpus Collegii constare volumus ex Præposito tanquam capite "et ex Sociis et Scholaribus tanquam nobilioribus hujus corporis "membris (*a*)."

The Visitors then state, that by the fourth head of these statutes, the authority of the Provost and seven Senior fellows is ordained in these words:—

"Quia in omni societate bene constituendâ paritas membrorum "maxime caveri debet utpote quæ anarchiam, et rerum omnium "confusionem inducat idcireo, Præpositum hujus Societatis caput "constituimus eumque auctoritate summâ in moderandis personis et "negotiis Collegii et in omnibus aliis quæ ad Collegii regimen "quovis modo spectant, vel spectare possunt munimus. Quo melius "autem munere suo fungatur ordinamus et volumus, ut e toto "Sociorum numero septem maxime seniores Socii ei sint tanquam "assessores et ut eorum consilio et auxilio omnia majora Collegii "negotia tractet sive ad mores sive ad doctrinam sive œconomiam "spectantia et hi septem Socii Seniores vocentur. Horum autem "auctoritas qualis esse debeat partim hic et partim aliis variis "Statutis Collegii exponitur. Volumus igitur ut Præpositus et "horum Seniorum pars major (nempe quatuor) Collegii regimen "electiones omnes Sociorum Officiariorum, Discipulorum, et Minis-"trorum Collegii graduumque collationes definiant et concludant. "In quibus omnibus definiendis Præpositum, aut eo absente, Vice-"præpositum, unum semper esse volumus (*b*)."

It is quite certain that great power is intentionally and purposely conferred on the Provost and Senior Fellows, who form what is commonly called the Board of the College. The founder intended them to have great power and authority in the matter of elections, as also the power of interfering and regulating all other matters belonging to the College. The conferring of such great power on the Provost and Senior Fellows was considered salutary, without any particular distinction being taken as to this or that power in this or that business.

The Visitors then return that by the statutes of Charles, provision is made for the qualification of Scholars in these words:

"In Discipulorum electione quoties locus aliquis quocunque modo

(*a*) College Statutes, &c., Mac Donnell's edition, p. 31. (*b*) Ib. p. 35.



T. T. 1845. *Queen's Bench.*

THE QUEEN *v.* TRINITY COLLEGE.

"vacaverit volumus et statuimus ut a Præposito, et septem seniori-"bus aut saltem majore parte eorundem alius aptus et habilis in "locum vacuum assumatur. In quâ electione habeatur ratio inopiæ "ingenii, doctrinæ, virtutis, et quo magis quisque ex eligendorum "numero his excedit eo magis ut æquum est præferatur. Omnes "qui Discipulatum in Collegio petunt ab electoribus ab horâ octavâ "antemeridianâ ad decimam et ab horâ secundâ pomeridianâ ad "quartam per duos dies diligenter quid in grammaticâ et literis "humanioribus possint examinentur" (*a*).

Then there is a preference to be given to those educated in Dublin Schools, or born in counties where the College has property, for the reason, as stated in the statutes, that the sons of those who contribute to the support of the College, may be educated in a manner that shall be of advantage to Church and State. Heirs present or future are not to be elected.

The Visitors then return the statute concerning the form of election to be observed as follows:

"Quoniam ad regimen Collegii permultum conducit legitimam "in electionibus formam observari, volumus ut quoties Socii juniores "vel Discipuli eligendi sint peractâ examinatione per Statuta requi-"sitâ Præpositus et Socii Seniores ad monitum Præpositi convenient "in Sacello et perlectis statutis *De eorum qualitate et electione* una "cum hoc capite *De formâ et tempore electionum,* nomina candidato-"rum publice a primario Lectore recitabuntur. Quo peracto quisque "elector hoc juramentum dabit.

"Ego, G. C. Deum testor in conscientiâ meâ me statuta nuper "lecta fideliter et integre observaturum et illum vel illos in Socium "vel Socios aut Scholarem discipulum sive Scholares discipulos "nominaturum et electurum quem vel quos Statuta nuper lecta "significare et apertius describere mea conscientia judicabit omni "illegitimâ affectione, odio, amore, et similibus sepositis" (*b*).

The electors are therefore bound to elect the person whom the statutes point out. This form of election makes it a very solemn proceeding on behalf of those to whom the statutes intrust the power. They are under a solemn resposibility to be actuated and guided only by the statutes of the College. The election is, therefore, an exceedingly solemn proceeding, and it is not stated that any thing has been done through fear, favour or affection, or improper motives in the election from which the appeal has been brought.

The return then states the facts of the number of vacancies in

(*a*) College Statutes, &c., Mac Donnell's edition, p. 36.

(*b*) Ibid, 96.

E. T. 1845. *Queen's Bench.* THE QUEEN *v.* TRINITY COLLEGE.

scholarships having been sixteen—of the election having been held, and of the vacancies having been duly filled.

The Visitors then go on to state their own position. It is observable that there is no restriction imposed on their office and duties. They appear to be general Visitors, their duties extending to every thing which may be requisite for the superintendence and advancement of the College. The language of the passages of the statutes set out in the return shows the extent of the power which was to be conferred on the persons who should thereafter come to fill the office of Visitor. Persons high in rank, and who must be considered altogether incapable of violating the important duties of the office cast upon them—persons who might safely be intrusted with the care of all that regarded the preservation of the College.

The Visitors are further empowered by the statutes "ut omnes "lites, actiones, et controversias, quas Præpositus et major pars "Seniorum Sociorum pro tempore existentium non possint compo- "nere dirimant et definiant" (*a*). There is no distinction here as to the subject matter of the complaint which the Visitors are empowered to decide. There is nothing presumed or assumed so as to make one conclude that there was any thing that the Visitors had not equal power of inquiry over.

The Visitors are further empowered "et quod in omnia delicta ab "ipso Præposito et Sociis Senioribus Collegii prædicti non emendata "animadvertant" (*b*). There is no class of cases not subject to their power. No individual, however high or exalted in the College, but is supposed to be capable of falling into error, and as often as such an event shall happen, power is given to the Visitors of coming to a conclusion on the subject matter of that error. The Visitors next return a passage of the statutes, providing that all domestic disputes should be decided within the College. But this passage contains the following remarkable clause:—"appellationem tamen "ex justâ causâ gravaminis ad Visitatores Collegii non impedimus. "Sed ne frequenti appellatione Collegio dedecus aut Visitatoribus "nimia creatur molestia licebit iis inepte et de levi appellantem "rejicere" (*c*).

It appears, therefore, that the power of the Visitors is totally unrestrained. This power is assumed to extend to every thing of which just complaint might be made; this power clearly extends to those things which relate to the purity of election, and to the manner in which elections are conducted. Such a case as the present is a

(*a*) College Statutes, &c., Mac Donnell's Edition, p. 27. (*b*) Ibid.
(*c*) Ibid, 54.



T. T. 1845. *Queen's Bench.* THE QUEEN *v.* TRINITY COLLEGE.

case of the kind that the founder of this College contemplated, as proper to be the subject of appeal to the Visitors. The phrase "inepte et de levi appellantem" shows the strong distinction between absurd and unfounded complaints, and complaints that may be founded in justice. Then the Visitors return the power (*a*) of interpretation given to them in certain cases, and though the present is not a proceeding under that clause, the clause appears necessary to advert to here, to show another instance of the founder's willingness to have causes of complaint, proper to be entertained, entertained and investigated by the Visitors. There is, in fact, nothing that I can conceive that is not open to the Visitors to entertain, and this conclusion appears on the face of the return the Visitors have made. I have taken pains to show that the Visitors are competent to investigate, inasmuch as the defence made by them is, that they have no jurisdiction.

The charter of William the Fourth (*b*) is set out in the return, and, as appears to me, without any occasion, for the construction put upon that charter by the Counsel for the prosecutor is perfectly correct. It refers to solemn visitations, and not to an appeal like the present case. Formerly the Visitors were compelled to hold solemn visitations at stated periods; first triennially, and then annually. By the charter of William the Fourth they are relieved from this compulsion, and they may now choose the times of holding solemn visitations. But that charter of William the Fourth does not apply to a case like the present.

The Visitors conclude their return by saying: "We are advised "and submit that the said Provost and Senior Fellows were fully "empowered by the said statutes finally to perfect and complete the "election of candidates for the said sixteen places for Scholars, "without any appeal to us, as Visitors of said College, from said "election, when duly completed; and that we had not in or during "the said year 1843, or at any time since, and did not derive under "said statutes, or from any other sufficient authority, any jurisdiction, "power, or right whatsoever, as such Visitors as aforesaid, to hear "the matter of the said appeal of the said D. C. Heron, against the "election of candidates for scholarships in 1843, or to institute "inquiry into his case, or to adopt means for securing the place of "Scholar which he claimed, or otherwise to determine his appeal." As to the statement, that the Visitors have, according to the discretion vested in them, rejected Heron's appeal, I pass that by, as I have

(*a*) College Statutes, &c., Mac Donnell's Edition, p. 102.
(*b*) Ibid, p. 293.

T. T. 1845. *Queen's Bench.* THE QUEEN *v.* TRINITY COLLEGE.

already said the charter of William the Fourth gave them no such discretion.

I will make a few observations on the nature and position of the office of Visitor, which the Primate and Achbishop of Dublin are called on to exercise. A great many cases have been cited, but I find the subject well stated in 1 *Blackstone's Commentaries*, p. 479:

"The general duties of all bodies politic, considered in their "corporate capacity, may, like those of natural persons, be reduced "to this single one, that of acting up to the end or design, whatever "it be, for which they were created by their founder.

"I proceed, therefore, next to inquire how these corporations "may be visited; for corporations, being composed of individuals "subject to human frailties, are liable, as well as private persons, "to deviate from the end of their institution. And for that reason "the law has provided proper persons to visit, inquire into, and "correct all irregularities that arise in such corporations, either "sole or aggregate, and whether ecclesiastical, civil, or eleemosy-"nary." . . . . . "With respect to all lay corporations, "the founder, his heirs, or assigns, are the Visitors, whether the "foundation be civil or eleemosynary." And again, p. 483. "But "whatever might be formerly the opinion of the clergy, it is now "held as established common law, that colleges are lay corporations, "though sometimes totally composed of ecclesiastical persons, and "that the right of visitation does not arise from any principles of "the canon law, but, of necessity, was created by the common law. "And yet the power and jurisdiction of Visitors in colleges was left "so much in the dark at common law that the whole doctrine was "very unsettled till the famous case of ***Philips*** v. ***Bury*** (*a*). In this "the main question was, whether the sentence of the Bishop of "Exeter, who, as Visitor, had deprived Doctor Bury, the Rector of "Exeter College, could be examined and redressed by the Court of "King's Bench. And the three puisne Judges were of opinion that "it might be reviewed, for that the Visitor's jurisdiction could not "exclude the common law, and accordingly judgment was given in "that Court. But the Lord Chief Justice Holt was of a contrary "opinion, and held, that by the common law, the office of Visitor is "to judge according to the statutes of the College, and to expel and "deprive upon just occasions, and to hear all appeals of course, and "that from him, and him only, the party aggrieved ought to have "redress, the founder having reposed in him so entire a confidence "that he will administer justice impartially, that his determinations "are final, and examinable in no other Court whatsoever. And upon

(*a*) Ld. Raym. 5; 4 Mod. 106; Show. 35; Skinn. 407; Salk. 403; Carthew, 108.



T. T. 1845. *Queen's Bench.* THE QUEEN *v.* TRINITY COLLEGE.

"this a writ of error being brought into the House of Lords, they "concurred in Sir John Holt's opinion, and reversed the judgment "of the Court of King's Bench; to which leading case all subse-"quent determinations have been conformable."

Now there is nothing in these charters, from beginning to end, to limit the general uncontrolled power extending to all cases, which is thus deemed at common law to be in the Visitor of a College.

There is an authority which points out very strongly the judg-ment we ought to give in this case: ***Rex*** v. ***Bishop af Lincoln*** (*a*); "where a mandamus was prayed to the Bishop as Visitor of Lincoln "College, Oxford, to compel him to receive, hear, and determine an "appeal of Dr. Halifax, who complained of an undue election to the "office of Rector of that College, to which Mr. Horner had been "admitted. The Court determined that where, by the statutes of a "college, a Visitor is appointed who is to interpret the statutes, and "an appeal is lodged with him, the Court will compel him to hear the "parties, and form some judgment, though they will not oblige him to "go into the merits, for it is sufficient if he decide that the appeal "comes too late." In conformity with that judgment we decide that these Visitors shall be put in motion without at all suggesting the judgment they ought to form. They may, perhaps, reject the appeal all altogether. They may find grounds for deciding against Heron, perhaps in the Scholar's oath, perhaps in the duties required of Scholars, perhaps in the statutes. All these things are to be considered by the Visitors and not by this Court.

What extent of authority the Visitors can exercise in this case is shown in a passage in the statutes, not stated in the return of the Visitors.

"Idcirco Visitatoribus Collegii in Chartâ nostrâ regiâ designatis, "potestatem concedimus et insuper rogamus eos in Domino ut semel "in unoquoque triennio per se, vel per alios ad id muneris deputatos "hoc Collegium adeant ut Præpositum, Vicepræpositum, Decanos, "Bursarium Prælectores, Socios, Scholares, et Discipulos omnes "Collegii in unum convocare possint, et velint Collegium tam in "capite quam in membris visitare ac de et super omnibus et singulis "statum commodum honorem et dicti Collegii Statuta Præpositi, "Vicepræpositi, Bursarii, Decanorum, Prelectorum, Sociorum, Scho-"larium, discipulorum et ministrorum reformationem et correctionem "concernentibus diligenter inquirere juramentum de dicendo verita-"tem in præmissis omnibus et singulis ab eisdem exigere crimina "excessus delicta et negligentias quorumcunque dicti Collegii quali-

(*a*) 2 Term Rep. 338, *n.*

T. T. 1845.
*Queen's Bench.*
THE QUEEN
*v.*
TRINITY
COLLEGE.

"tercunque commissa in eâ visitatione comperta secundum criminum "excessuum delictorum et negligentiarum qualitatem et exigentiam "et juxta horum Statutorum tenorem debite punire et reformare aut "ut puniantur et reformentur per Præpositum vel quorum interest "curare cæteraque omnia et singula facere et exercere quæ ad eorum "correctionem et reformationem sunt necessaria aut quovis modo "opportuna etiamsi illud ad privationem seu amotionem Præpositi, "Vicepræpositi, aut alterius cujuscunque ab administratione vel "officio seu ad amotionem alicujus Socii Scholaris vel discipuli ab "hoc Collegio (si tamen hoc ipsum Statuta Collegii exigant) (*a*).

Here is extreme power given to the Visitors, and there is no person in College who is not by express terms subject to it. Then by common law the Visitors have extensive power unless restrained, and here is no restraint. We are of opinion that the Visitors have misconceived their duties, and that there is nothing in the statutes or the charters which prohibits the interference of the Visitors in a matter of so much consequence as the election of a Scholar. This person appealing was a member of the College. He had been admitted a Sizar, and he had sworn to obey the statutes of the College. He was at any rate admitted a member of that College. If he had rights at that time, and was entitled in order of merit to be elected a Scholar, he has had a good ground for appeal, and his appeal ought to have been heard. His appeal cannot for an instant be considered frivolous or vexatious: it is one in which the interests of the College are much involved. On the whole, we think we have a direct precedent in the case of *Rex* v. *Bishop of Lincoln*, which I have referred to, and the judgment of the Court is, that the visitatorial power be put in motion by the awarding of the peremptory mandamus to the effect prayed by the prosecutor.

(*a*) College Statutes, &c., Mac Donnell's Edition, p. 104.

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NOTE.—The appeal was heard before the Visitors and the Right Honorable R. Keatinge, the Judge of the Prerogative Court, who acted as their Assessor, and was argued by Richard Moore, Longfield and Butt on the part of the College, and Pigot, O'Hagan and Flanagan for the appellant. The opinion delivered by the Assessor, and the return made by the Visitors, is subjoined:—

The eligibility of Roman Catholics to scholarships in Trinity College depends on the construction of the College statutes of 1794. As the law stood previous to the Act 33 *G.* 3, c. 21 (1793), there was nothing to prevent Roman Catholics from entering the College; but on their admission, they would (in common with all other students) have immediately become subject, under the College statutes, to the performance of religious duties which, as Roman Catholics, they could not conscientiously discharge, and in addition to this obstacle, they could not obtain degrees without taking the oaths of allegiance and abjuration, and making the declaration



T. T. 1845.
*Queen's Bench.*
THE QUEEN
*v.*
TRINITY
COLLEGE.

against transubstantiation, prescribed by the statute 3 *W.* & *M.*, c. 2. The effect of this was, that Roman Catholics were excluded from the College. The 13th section of the Act of 1793 is in these words:—"And whereas it may be expedient, in case his Majesty, his heirs and successors, shall be pleased so to alter the statutes of the College of the Holy and Undivided Trinity near Dublin, and of the University of Dublin, as to enable persons professing the Roman Catholic religion to enter into or to take degrees in the said University, to remove any obstacle which now exists by statute law; be it enacted, that from and after the first day of June one thousand seven hundred and ninety-three, it shall not be necessary for any person, upon taking any of the degrees usually conferred by the said University, to make or subscribe any declaration, or to take any oath save the oaths of allegiance and abjuration, any law or statute to the contrary notwithstanding."

This section does not, nor does any other part of the Act of 1793, profess to interfere with any of the College statutes. It was in the power of the Crown alone, without the concurrence of the rest of the Legislature, so to alter the College statutes as to relieve Roman Catholics from all duties inconsistent with their religious opinions, and thus to give them the benefit of instruction in the University; but the Crown alone had not the power to remove the bar to taking degrees, which had been created by Act of Parliament. The College statute of 1794 recites the 13th section of the Act of 1793, and then proceeds as follows:—"Sciatis ergo quod nos, pro eâ curâ, quam singularem habemus erga subditos nostros qui religionem Pontificiam sive Romano Catholicam profitentur, et ut iidem in dicto Collegio nostro et in dictâ academiâ bonis artibus et literis instituantur: statuimus et ordinamus, quod omnibus subditis nostris qui religionem Pontificiam sive Romano Catholicam profitentur, liceat, et deinceps licebit in dictum Collegium admitti, atque gradus in dictâ academiâ obtinere præstitis prius omnibus exercitiis per leges et consuetudines academiæ requisitis, aliquo statuto dicti Collegii, aut statuto, regulâ, aut consuetudine quâcunque dictæ academiæ in contrarium non obstante."

Thus, it will be observed, the College statute of 1794 very precisely defines the object which the Crown had in view, viz., that Roman Catholics should have a liberal education in the University; and then, to effect that object, it provides that it shall be lawful for Roman Catholics to be admitted and obtain degrees, notwithstanding any statute, rule, or custom of the College to the contrary. The words, "in dictum collegium admitti atque gradus in dictâ academiâ obtinere," taken strictly and in their literal sense, would merely entitle Roman Catholics to enter College, and perform all the exercises (not inconsistent with their religious opinions) necessary for obtaining degrees, and having performed these exercises, and thus acquired proficiency "in bonis artibus et literis," then to obtain degrees accordingly. The College statute of 1794 does not, in favour of Roman Catholics, dispense in terms with the religious duties and obligations which were, by the then existing College statutes, cast on all students; but I think it quite clear, that on its true construction, it, by necessary implication, dispensed, in favour of Roman Catholics, with all religious duties which they could not conscientiously perform, so far as such dispensation was necessary for enabling them "in dictum Collegium admitti atque gradus, in dictâ academiâ obtinere;" but no further or otherwise. I think it equally clear, that the College statute of 1794 did not in any manner interfere with the religious duties of the students who were not Roman Catholics.

In order to form a correct opinion as to the meaning of the words "in dictum Collegium admitti atque gradus in dictâ academiâ obtinere," and to determine whether they entitle Roman Catholics to become candidates for Scholarships, it is necessary to consider the nature of the University establishment. The Visitors being appointed by the founders, are bound to carry out their intentions, so far as

T. T. 1845.
*Queen's Bench.*
THE QUEEN
*v.*
TRINITY
COLLEGE.

they are clearly expressed in the original charters and College statutes, save so far as by equally clear words or necessary implication, they have been abrogated by subsequent provisions. The College is a corporation; the members of which are the Provost, Fellows, and Scholars. The number of Fellows and Scholars is limited. The charter of Elizabeth and Charles the First, and the body of College statutes accompanying the last mentioned charter, clearly contemplate an establishment for the advancement of religion, and in which not only all the members of the corporation, but all persons receiving instruction, should be Protestants. This will be abundantly shown by a few references to the last edition of the College statutes (1844). By the charter of Elizabeth (pp. 7, 8) Fellows were to vacate their Fellowships at the end of seven years, "ut alii in eorem locum suffecti pro hujus Regni et *Ecclesiæ* beneficio emolumentum habeant." The statute "de cultu divino" (p. 44) points out religious duties to be performed by all the members and students, including the receiving of the Sacrament as received by Protestants; by the statute "de sociorum juniorum electione" (p. 42), all Fellows (except the Professors of Law and Medicine) must take priests' orders within three years after their election, or forfeit their Fellowships. The statute "de cultu divino" (p. 50) provides, "Porro Præpositi et sociorum seniorum erit videre ne qua Pontificiæ, aut hæreticæ religionis opinio intra Collegii fines alatur aut propugnatur sive publice sive privatim." The charter of Charles the First (p. 38) removes the restriction preventing Fellows from holding their Fellowships for more than seven years, "it being found injurious to the welfare of the College, the State, and the Church." The better advancement of religion and learning, is the reason assigned for the Chancellor's assent (p. 119) to the College decree of the 23rd October 1722, for increasing the salaries of the Provost, Fellows, and Scholars. The College statute of 1st George the Third (p. 147), "de Professore in sacrâ Theologiâ," proposes the establishment of a Professorship of Divinity by this recital, "cum vero permultum refert ut juventus academica, illi præsertim qui sacris ordinibus desitinatur in sociis literis, et religionis Christianæ doctrinis diligentius erudiantur, *in quem præcipue finem fundatum fuit hoc Collegium.*" The words "in quem," &c., clearly stating in the words of the then Sovereign (George the Third, who afterwards made the College statute of 1794), that the advancement of religion was the principal object for which the University was established. The College statutes contemplate Scholars as a class in whose selection the Church and the State had an interest. By the statute, "De Scholaribus sive Discipulis" (p. 36), it is provided, that in the election of Scholars, those educated in Dublin schools, and counties where the College had lands, should be preferred, "ut quorum labore et sudoribus Collegii membra omnia, et singula sustentantur eorum potissimum liberi in eodem educentur et virtute ac humanioribus literis ad *ecclesiæ*, et reipublicæ emolumentum instituantur." Scholars were to hold their scholarships (p. 38) until they obtained, or could have obtained, a degree of Master of Arts, or until they were elected Fellows; and (p. 39) in the election of Fellows, Scholars were to have a preference. The charter of Elizabeth (p. 5) gives to the Provost, Fellows, and Scholars, power to acquire land to the value of £400 a-year—"ad sustentationem et manutentionem prædicti Collegii et ad relevamen et sustentationem Præpositi, Sociorum et Scholarium et prædicti Collegii;" and the charter of Charles the First (p. 32) gives power to the College to hold additional land, to the value of £200 a-year, for the same purpose.

The cultivation of the Protestant religion appears to have been one principal object for which Trinity College was established, and the cultivation of learning was another. It was clearly in the power of the Crown to alter all or any of the College statutes imposing religious duties on Students; and the Legislature having,



by the Act of 1793, relieved Roman Catholics from the necessity of taking any oaths, on graduating, save those in that Act mentioned, there was nothing to prevent the Crown (if it had so pleased) from so altering the College statutes as to put Protestants and Roman Catholics in all respects (save as to Fellowships) precisely on the same footing; and the inquiry is, did the Crown, in the College statute of 1794, use words showing an intention to do so? The Act of 1793 relieved Roman Catholics from disabilities, but it cannot be denied that, after having in section 7 provided in general terms that they might hold, exercise, and enjoy all civil and military offices and places of trust or profit under his Majesty, his heirs and successors, there is in section 9 a long list of exceptions, including almost all of the most valuable offices, and in the enumeration of exceptions is to be found "Provost or Fellow of Trinity College, Dublin." Now, if Fellows had not been named in this exception, I think it very doubtful whether the provisions of the 7th section of the Act of 1793 could have extended to them, as they could not well be said "to hold any place of trust or profit under the Crown." The insertion of Provost and Fellows, and the non-insertion of "Scholars" in the 9th section, was relied on as affording an inference that the Legislature intended to open Scholarships to Roman Catholics; but the answer to this argument is to be found in the 7th section of the Act of 1793, which clearly does not include Scholars, and therefore it was not necessary to name them in the 9th section for the purpose of excepting them out of the operation of the 7th section. Besides, the 7th section of the Act of 1793 provides that Roman Catholics might hold any office or place of trust in, or be a member of, any lay body corporate, except Trinity College, and also that Roman Catholics might be Professors, Masters, or Fellows of any college to be thereafter founded in Ireland, provided such college should be a member of the University of Dublin, and not founded exclusively for Roman Catholics. All this seems to me to afford strong evidence of an anxiety on the part of the Legislature not to interfere with the Protestant character of the corporation of Trinity College. At all events, it clearly shows that where the Legislature intended to legislate in relation to Masters or Fellows of colleges, or members of corporations, it deemed it right to use definite and precise language for the purpose. The 13th section of the Act of 1793 recites the expediency of removing the bar which then existed by statute to Roman Catholics taking degrees, in order to enable the Crown so to alter the College statutes as to allow Roman Catholics to enter College and take degrees. Without altering the Protestant character of the corporation, or allowing Roman Catholics to be members of it, and without diverting any of its funds from the purposes mentioned in the charters of Elizabeth and Charles the First, it was quite possible for the Crown to admit Roman Catholics to enter College and obtain degrees, by relieving them for that purpose, and for that purpose only, from the obligation to perform religious duties; and if it be supposed that this limited object was in the view of the Crown, I do not think more suitable words could have been used for the purpose than those which are to be found in the College statute of 1794. The operative words of that statute are special and precise, and in my opinion, have the effect of dispensing with the religious duties imposed by the College statutes (on the Students generally) in favour of Roman Catholics, not altogether, and for all purposes, but merely for the limited purposes specified.

It must be admitted that if Roman Catholics are, on the true construction of the College statute of 1794, eligible to Scholarships, a change was thereby made in the Protestant character of the corporation of so serious and important a kind, that it is not very probable the Crown would have made it intentionally, without at the same time making some change in the Scholar's oath. The Scholar's oath is not abrogated—it contains three important matters. The first consists of an acknowledgment, "Regiam auctoritatem serenissimi nunc Regis Caroli secundum Deum.

T. T. 1845.
*Queen's Bench.*
THE QUEEN
*v.*
TRINITY
COLLEGE.

T. T. 1845.
*Queen's Bench.*

THE QUEEN
*v.*
TRINITY COLLEGE.

summum esse in regnis Angliæ, Scotiæ, et Hiberniæ agnoscere, et nullius externi principis aut pontificis potestati obnoxiam;" he then swears that he will willingly obey the College statutes, and do all in his power to have them observed by others, and next, that he will diligently perform all business of the College which shall be entrusted to his charge. It appears by the College statutes that in all cases where any changes were made in the duties or rights of the Provost or Fellows, which might render the existing forms of oaths inapplicable, the oaths were altered with reference to the new provisions, but here the oath is left entire. Assuming (as was argued) that a Roman Catholic could now conscientiously make the profession, "*regiam auctoritatem*," &c., in the same sense in which the words were used in 1637, and admitting (as was also argued), that a Roman Catholic, though intending not to perform the religious duties required by the College statutes, might conscientiously swear that he would obey the statutes, if the obligation on him to perform religious duties was abrogated by implication; I do not think he could conscientiously swear that he would do all in his power to have the statutes observed by others, it being clearly the duty of all Protestant Students and members to perform religious duties which he, as a Roman Catholic, could not conscientiously enforce the observance of. The College statutes of 1794 does not require any oath from a Roman Catholic student; none of the antecedent College statutes required any oath from any student; but if it be supposed that the Crown, by the College statute of 1794, intended to make Roman Catholics eligible to be members of the corporation of Trinity College, it is strange, with the Act of 1793 before it, it did not require the Roman Catholic Scholar to take the oath which the Act of 1793 required from every Roman Catholic on becoming a member of a body corporate.

On the whole, I am of opinion, that on the true construction of the College statute of 1794, Roman Catholics are not admissible to scholarships in Trinity College, Dublin, looking at the precise and pointed language of that statute and of the thirteenth section of the Act of 1793, both in their recitals and their enactments; and looking to the whole body of College charters and statutes, I think it was the clear intention of the Crown, by the statute of 1794, merely to give to Roman Catholics the benefit of a liberal education, and the right to obtain degrees, but without allowing them to become members of the corporation of Trinity College, or in any manner changing its Protestant character.

For these reasons I advise the Visitors to dismiss Mr. Heron's appeal.

R. KEATINGE.

In accordance with the foregoing opinion, the Visitors made the following return to the mandamus:—

"By virtue of the within writ to us directed, and in obedience thereto, we, as such Visitors of the said College, did hold a visitation therein, and duly hear the said appeal of the within named Denis Caulfield Heron, as by the said writ we are commanded, and thereupon, on hearing the matter thereof in presence of Counsel learned in the law, as well on behalf of the said Denis Caulfield Heron as for and on behalf of the Provost and Fellows of the said College; and on full debate and due deliberation had thereon, we have adjudged it reasonable, and fit, and consonant to the true intent and meaning of the statutes of the said College, and the laws of this realm, in that behalf, to order and determine that the said appeal of the said Denis Caulfield Heron should be dismissed; and we have thereupon dismissed the same; all which we humbly certify to our Lady the Queen, at her Court of Queen's Bench at Dublin, as by the within writ we are commanded.

So answer,

JOHN G. ARMAGH.
RICHARD, DUBLIN. } Visitors.



M. T. 1845.
*Queen's Bench.*

Lessee of HENRY BOWEN and others,
*v.*
PIERCE KEATINGE.*

*Nov.* 4, 6.

EJECTMENT on the title, tried at the Spring Assizes of 1845 for the county of Tipperary, before Pennefather, C. J. The lessors of the plaintiff, in proof of their title, gave in evidence a lease bearing date the 6th of April 1781, made between Edmund Doherty and Patrick Keatinge, whereby Edmund Doherty demised the premises in question to Patrick Keatinge, his executors, administrators and assigns, for a term of sixty-one years from the 25th of March then last past, provided that the lives of Pierce Keatinge and Roger Keatinge, sons of the said Patrick Keatinge, and Daniel Murphy, or the longest liver of them, should so long subsist; and in case the said three lives should fall before the expiration of thirty-one years, then that Patrick Keatinge, his executors, administrators or assigns, should have the premises but for thirty-one years from said 25th of March. The lease contained the usual clauses of distress and re-entry, and the ordinary covenants. They also proved payment of rent under this lease by the defendant to the agent of Robert Bowen, one of the lessors of the plaintiff, up to the 25th of March 1842, and service of a notice to quit signed by Bowen. It was admitted that Robert Bowen was seised of the estate of Edmund Doherty.

The defendant gave in evidence a lease bearing date the 21st of January 1802, whereby Edmund Doherty demised the premises named in the lease of April 1781 to Patrick Keatinge, habendum to him and his heirs from the 29th of September then last past, for the life of Pierce Keatinge, son of Patrick Keatinge, in the place, room and stead and by way of exchange, of the life of Daniel Murphy (then living), son of Daniel Murphy, sen. *(and whose said son was a life inserted in a former lease of said lands)*, and in case the life therein and thereby granted should happen to die before the expiration of eleven years from said 29th of September, then and in such case Patrick Keatinge, his heirs, &c., should hold and enjoy the lands for eleven years from said 29th of September. This lease contained all the covenants in the lease of 1781, and some other special covenants, with penalties for non-performance.

A, in 1781, by lease demised certain premises to B, his executors and assigns, for a term of sixty-one years and three lives concurrent, with a proviso that in case the lives should drop within thirty-one years, then the lease should be good for thirty-one years. In 1802 he demised the same premises to B, habendum to him and his heirs for the life of C, in the place, room and stead and by way of exchange for the life of D, the surviving *cestui que vie* in the lease of 1781, with a proviso that in case C died within the space of eleven years, the lease should subsist for that period: this latter lease also contained covenants not in the former lease.

*Held*, that the lease of 1802 operated as a new lease, and passed a legal estate.

* PENNEFATHER, C. J., owing to indisposition, was absent from Court during this Term.